IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 14477 of 2005

Between:

D. Srinivas Rao, S/o. Prasad Rao,
Bhattupally (Under Suspension) Hanumakonda Mandal, Warangal District.

..... PETITIONER

AND

1 The Chief Executive Officer, Zilla Parishad, Warangal, Warangal District.
2 The District Educational Officer, Warangal, Warangal District.
3 The Mandal Educational Officer, Mandal Parishad, Hanumakonda,

Warangal District.
4 The Headmaster, U.P. School, Bhattupally, Hanumakonda Mandal ,

Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction preferably one in the nature of Writ of Mandamus, declaring the order of the A.P. Administrative Tribunal, Hyderabad, dt. 20th June, 2005 made in O.A.No. 1701/2005 as well as the order of the 1st Respondent in R.C.No. C3/662/2004 dt. 31-3-2005 placing the petitioner under suspension with retrospective effect as illegal and arbitrary and contrary to law and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits forthwith.

Counsel for the Petitioner: MR.C.RAJA SEKHAR REDDY
Counsel for the Respondents: GP FOR SERVICES I

The Court made the following :

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ORDER: (per the Hon'ble Sri Justice J.Chelameswar)

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Aggrieved by an order dated 20-06-2005 in O.A.No.1701 of 2005 on the file of the A.P. Administrative Tribunal, Hyderabad, the unsuccessful applicant therein filed this writ petition. The petitioner was initially appointed as Secondary Grade Teacher in the year 1984 and for the last about three years he was working at Upper Primary School, Bhattupally, Hanumakonda Mandal, Warangal District. While he was working, the P.S. Khajipet registered a case in crime No.106 of 2002 against the petitioner under Section 420 of the I.P.C. It appears from the record that the said complaint, which led to the registration of the crime, was received by the said police station on 16-06-2002 and eventually the petitioner came to be arrested. Though the actual date of arrest is not available on record, from the impugned order it appears that the first respondent received a letter dated 01-01-2004 from the D.E.O., Warangal, wherein it was stated that the petitioner had been remanded to judicial custody. In view of the said detention, the petitioner was initially sought to be kept under suspension by an order dated 01-01-2004 of the District Educational Officer, Warangal, which order came to be challenged before the A.P. Administrative Tribunal in O.A.No.431 of 2004 on the ground that the District Educational Officer lack jurisdiction to pass the order dated 01-01-2004. The Tribunal during the pendency of the O.A., thought it fit to keep the order dated 01-01-2004 under suspension on the ground that prima facie it was an order without jurisdiction.

2. Consequent upon the said order of the Tribunal, the order dated 01-01-2004 has subsequently revoked by the D.E.O., Warangal, by proceedings dated 24-04-2004 and the petitioner was reinstated into service. However, on 31-03-2005, the Chief Executive Engineer, Zilla Parishad, Warangal, first respondent herein, passed another order purporting to keep the petitioner under suspension with effect from 01-01-2004. The said order once again came to be challenged in O.A.No.1701 of 2005,

which was disposed of by the order impugned in the present writ petition on 20-06-2005. The Tribunal while disposing of the O.A. rejected a submission made on behalf of the present petitioner that the first respondent did have the necessary competence to pass the impugned order, but held that since the impugned order had been passed retrospectively the same was illegal. Dealing with the said submission, the Tribunal held as hereunder:

> "It is now well settled in law that the order of suspension cannot be passed retrospectively. Therefore, the impugned order dated 31-03-2005 retrospectively suspending the applicant from service from 01-01-2004 is bad and the order of suspension shall be effective from the date of the order i.e., 31-03-2005".

3. Aggrieved by the decision of the Tribunal insofar as it held that such an order of suspension should be treated as an order effective from the date on which it was passed, but not with effect from which the order was sought to be implemented, the present writ petition is filed.

4. Sri Subhramanya Sarma, the learned counsel for the petitioner, argued that the declaration given by the Tribunal that the order dated 31-03-2005 of the first respondent shall be effective only from the date of the passing of the order i.e., dated 31-03-2005 is illegal as, according to the Sarma, by making such a declaration the Tribunal exercised the powers of the disciplinary authority, which is not permissible.

5. We regret to accede to the submission of the learned counsel for the reason that when such an order, as one passed by the first respondent, dated 31-03-2005, is partially within the jurisdiction of the authority which passed the order and partially beyond the jurisdiction of such an officer and where it is possible that the effect or operation of such order is clearly severable, a judicial authority always has the necessary jurisdiction to make a declaration to what extent such an order is invalid. This principle of partial invalidity of the administrative orders and their severability is well recognized by the administrative law. In fact, the said observation of the Tribunal that an order of suspension cannot be passed retrospectively is also a doubtful observation in view of the Rule 8 (2) of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, which reads as follows:

> "Rule 8. (2) A Government servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension—
>
> a. with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;
>
> b. with effect from the date of his conviction if, in the event of a conviction

> for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

However, that part of the declaration made by the Tribunal is not challenged by the respondents herein. Therefore, we refrain from expressing any opinion on the statement of law or interfering with such declaration in the present case.

6. In the circumstances, we do not see any merit in the writ petition. The writ petition is dismissed at the admission stage.

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J.CHELAMESWAR, J.

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M.VENKATESWARA REDDY, J.

Dated 18-07-2005.

SKMR

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Copy to:

1 The Chief Executive Officer, Zilla Parishad, Warangal, Warangal District.
2 The District Educational Officer, Warangal, Warangal District.
3 The Mandal Educational Officer, Mandal Parishad, Hanumakonda,

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4 The Headmaster, U.P. School, Bhattupally, Hanumakonda Mandal ,

Warangal District.

5 2 CCs to G.P. for Services I, High Court Buildings, Hyderabad

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One copy to C.Rajasekhar Reddy, Advocate.